

15.05.00.00 - LEASE RATES AND ADJUSTMENTS

15.05.01.00 **Valuation of Lease Rate**

The lease rate for an airspace site is established by the following methods:

- **Airspace Estimates** - used for preliminary discussions with potential users, for minimum value sites, or for uses of six months or less.

The lease rate for the rental agreement may not require an airspace estimate if there is already a clear basis in the market for the lease rate.
- **Airspace Appraisals** - A market value airspace appraisal is required for any site that will be leased on a direct basis without competitive bids and for those situations not meeting the criteria for bid lease valuations. This format is used for all development leases or when there is a question as to the site's highest and best use. The appraisal is valid for one year.

When direct negotiations for a development lease are entered into, the appraisal should not be requested until the potential lessee executes a Letter of Understanding (see Section 15.06.04.02) and makes a deposit that is sufficient to cover the cost of the appraisal. The potential lessee has the option of obtaining an independent appraisal report from a list of approved appraisers.

A reevaluation of the current lease rate may be required prior to extending the term of a long-term lease agreement, requiring a new airspace appraisal.
- **Bid Lease Valuations** - A bid lease valuation is required to establish a range of value in determining minimum rental rates on the basis of competitive bids. The valuation is valid for one year.

Both current use and lease rate should be considered when the airspace site is leased and the determination of the lease rate will be used to establish a new minimum bid.

When the valuation is complete, Airspace should summarize the report to use in discussions with the proposed lessee or to present the terms and conditions to the AAC (Form RW 15-02).

15.05.01.01 **Lease Rate Appraisal**

In lieu of a full appraisal report for any non-developmental uses on directly negotiated airspace leases, the Appraisal Branch can choose a simplified format to determine the value of sites used for parking, storage, or public parks. (See 7.15.05.00 for additional information.)

The appraisal will conclude a specific market lease rate as appropriate to the airspace site's attributes, limitations, benefits, and proposed use and terms.

This streamlined approach cannot be used if the highest and best use is in question or if the airspace site is considered as plottage to an adjoining property. (See 7.15.05.00 for additional information.)

15.05.01.02 **Percentage Leases**

In rare cases, the FMLR will be a percentage of the gross income the lessee will generate at the site. Airspace must determine the best percentage and establish the method for calculating same (e.g., five percent of gross revenues over a base rent). In addition, the lease agreement must provide for an audit by Airspace, usually on an annual basis, of the lessee's records to ensure the calculated amount is accurate.

The Office of Audits and Security shall pre-evaluate the lessee's method of keeping books, records, and accounts of financial transactions in connection with the lease. After the lease is executed, Airspace should request the Office of Audits and Security to audit the lessee's records every three years to validate annual audits conducted. Airspace can also request assistance to calculate the annual percentage rate if there is a question about the information the lessee provided.

See Section 07.15.00.00 for specific procedures.

15.05.02.00 **Plottage Value**

Airspace should advise the Appraisal Branch if the airspace site will be joined to an adjacent site for development. The airspace site may provide additional square footage/meters for parking that a local agency requires before the adjacent site can be developed, or the site may provide needed access to all or a portion of the adjacent site. An airspace site that increases the value of the adjacent site should generate a higher rate of return to the Department.

15.05.03.00 **Rate of Return**

A full appraisal report requires the property rights be valued as fee. A suggested rate of return based on market data should be included when the data is readily available. The rate of return will provide Airspace with a tight range of lease rates to use in negotiating all terms and conditions of the lease. If no data is available, Airspace must determine the comparable rates of return to use in establishing a lease rate from the FMV of fee; e.g., \$100,000 FMV x 10% rate = \$10,000 annual FMLR (monthly = \$835 rounded).

15.05.04.00 **Scheduling Valuation Requests**

Annually during the budget process, Airspace estimates the number and type of airspace site appraisals needed for the next fiscal year. The list identifies the lease areas to be valued and the dates by which the appraisals are needed. This list is then given to Appraisals, where it is used to prioritize preparation of airspace appraisals. Airspace should also request updates of appraisals over one year old.

Information about the site relevant to its valuation should be given to the appraiser. In cases of direct negotiation, the potential lessee's name and intended use are included in the appraisal request.

Effective communication between Airspace and Appraisals is essential. Changes to the schedule should be closely coordinated. The formal request for an estimate, valuation, or appraisal states the Airspace site number, the property rights to be appraised, and includes necessary appraisal maps, plans, and profiles of the freeway. It must include any restrictions that will be placed on use of property. Airspace should formally check on the status of its request well before the date the requested information is needed.

The appraiser and Airspace agent should discuss site use and restrictions before start of the appraisal and at

the rough draft stage. The appraiser should include in the appraisal, or otherwise convey to Airspace, any data useful in marketing the area to be leased.

15.05.05.00 **Lease Payments**

The lease rate is typically paid monthly; however, advance lump sum payments can be made on a semi-annual or annual basis (e.g., governmental entities that operate on a specific budgeting cycle or for minimum lease rates to save administration costs).

Prior notice to HQ A/S is required in cases of any payments less than the minimum amount.

15.05.05.01 **Minimum Lease Rate**

The minimum lease rate is the appraised FMLR, but not less than \$500 per month or \$6,000 per year, with exceptions:

- For Park and Ride (non-profit) and Marler Johnson lessees only, the lessee will provide a service to the Department (e.g., maintenance or security) or there is some other benefit.
- The legislature mandates lease rate (e.g., public agency use, homeless shelters).
- The FMLR supports a minimum rent of less than \$500, and the proposed use will benefit the local community or neighborhood.

Any other circumstances should prompt Airspace to consult with HQ A/S.

15.05.05.02 **Minimum Security Deposit**

The minimum security deposit for any airspace site is one month's rent for non-developed, short-term sites, but not less than \$500, and three months' rent for non-developed long term sites. The minimum security deposit for developed sites is three months rent, or more if the risk to the Department is great or the potential for damage and removal of improvements is high. Security deposits are required for all leases except Telecommunications Licenses and public agencies.

When the proposed use represents an extraordinary risk to the Department, Airspace will need to ensure the minimum security deposit is increased to reflect this additional risk or liability. Airspace should only allow high-risk uses when the benefits of the

proposed use outweigh any risks or liability to the Department.

15.05.05.03 **Periodic Adjustments**

The lease rate must be adjusted for all leases over two years. At a minimum, the rate will be equal to the Consumer Price Index (CPI) for the area and adjusted annually. Lease provisions establish a base rent and may not allow the adjusted rate to fall below the initial base rent (the lease rate when the lease was executed). Other lease provisions may not allow the adjusted rate to be less than the previous year's rate. It is imperative that Airspace reviews the lease provisions to determine if negative adjustments to the lease rate can be applied. Other proposals to adjust the rate can be based on a range (e.g., more than 2% but less than 7%) of the CPI, or adjusted at greater intervals than annually, but are compounded annually (e.g., adjusted every 5 years based on the annual CPI not to exceed 25%).

Reevaluations of the lease rate for long-term lease agreements should occur at least every 10 years.

Increases in the lease rate require periodic adjustments to the security deposit to ensure there are sufficient funds to cover potential damages or losses. Some basic lease types establish a mandatory rate increase.

15.05.06.00 **Rental Offsets**

Rental offsets may not be promised or offered to a lessee unless the offset is part of an approved lease. If a lease is already in effect, the Senior must approve the offset in writing. This includes Marler Johnson leases and Park and Ride lots.

Rental offsets should not be confused with rental adjustments to correct RWPS occupancy and billing errors or to process approved adjustments for certain maintenance activities and seismic retrofit credits.

15.05.07.00 **Seismic Retrofit Adjustments**

If the lease provides for such, adjustments may be made when the district/region needs temporary access to the Airspace site for seismic retrofitting. The temporary use must be less than six months, impact less than 50% of the site, and not impact any of the improvements.

HQ A/S must pre-approve Airspace's request for an adjustment. The request must be accompanied by the lessee's statement that no other form of compensation will be solicited.

The Department's long-term use of all or a portion of a leased airspace site may require the leasehold interest be acquired, depending on the specific provisions in the lease agreement.

Refer to appropriate Acquisition and Appraisal policy and procedural instructions for more details.

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